HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 988 of 2005.
Decided on: 27.8.2007.

Savitri Devi ..... Petitioner.

Versus

State of H.P.and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting?

For the petitioner: Mr.Naresh Kumar Thakur, Advocate.
For the respondents: Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Deepak Gupta, J. (oral):

By means of this writ petition, the petitioner has prayed that the order dated 16.5.2005, passed by the Land Acquisition Collector, Kangra, rejecting his petition under Section 28-A of the Land Acquisition Act, 1894, (hereinafter referred to as the Act), be quashed and set aside. The petitioner has also prayed that the compensation in this case may be re-determined and she be awarded compensation as has been paid to the claimants in RFA No.152 of 1995.

Brief facts necessary for disposal of the case are that the State of Himachal Pradesh issued a notification under Section 4 of the Act proposing to acquire land for the construction of Mukerian-Talwara-Nurpur- Chakkidhar road.

Whether reporters of local newspapers may be allowed to see the judgment?

In this notification, the land of various land owners was sought to be acquired. The acquisition proceedings culminated in the award of the Land Acquisition Collector passed on 27.4.1991.

Land references were filed by a large number of land owners including the petitioner. The reference court re-assessed the compensation and enhanced the assessed value of the land at Rs.1.00 lac per kanal. However, it made the deduction of 50% on account of development charges and the compensation payable was assessed at Rs.50,000/- per kanal. The State of Himachal Pradesh filed appeals against the award of the District Judge before this Court. A large number of appeals were filed. The present petitioner was the respondent in RFA No.322 of 1997. The petitioner did not file any cross objections in the appeal filed by the State. However, the other land owners who were the respondents in the other RFAs filed cross objections after affixing court fees. This Court decided the RFAs by a common judgment, dated 4th August, 2003. It came to the conclusion that the deduction of 50% amount made by the District Judge was not justified and held the land owners to be entitled to compensation at Rs.1.00 lac per kanal. However, in RFA No.322 of 1997, since there were no cross objections filed by the claimant though the appeal filed by the State was dismissed the compensation was maintained at Rs.50,000/- per kanal. The petitioner in the said RFA urged that she is similarly situated to the land owners in the other cases such as RFA 152 of 1995 and other connected appeals and may be paid compensation at the rate of Rs.1.00 lac per kanal, as assessed in those RFAs.

The learned Single Judge dealt with prayer of the petitioner in the following terms:

> *"Faced with this situation, learned counsel for the respondent submitted that liberty may be reserved to his client to approach the Land Acquisition Collector under Section 28-A of the Land Acquisition Act, 1894 so as to avail benefit of decision of this Court in RFA No.152 of 1995 and other connected cases dated 4.8.2003 and as modified vide order dated 8.4.2004. It hardly needs to be pointed out in this behalf that if law permits this, respondent can always approach the Land Acquisition Collector, who shall then proceed to dispose of the matter strictly in accordance with law, without being influenced by anything said in this order."*

A reading of this para clearly shows that the petitioner had reserved her right only to file a petition under Section 28-A and the learned Single Judge had permitted this to be done if the law so permits. The petitioner did not challenge this order of the learned Single Judge by filing any appeal and this judgment has attained finality.

Thereafter, the petitioner filed a petition under Section 28-A claiming that compensation be paid to her in terms of the judgment rendered by this Court in RFA No.152 of 1995 and other connected matters. This petition has been rejected by the Land Acquisition Collector solely on the ground that since the petitioner had filed a reference petition under Section 18 of the Act, the petition under Section 28-A was not maintainable. This order is under challenge before us.

Mr.Naresh Kumar Thakur, learned counsel for the petitioner, has raised following contentions in support of the petition:

1. That mere filing of reference petition under Section 18 of the Act would not debar the petitioner from filing a petition under Section 28-A and the order of respondent to this extent is incorrect.
2. That even assuring that the petition under Section 28-A was not maintainable, then on the principle of equity and fair play and on the ground that all the parties should be treated equally, the petitioner

should be awarded compensation at the same rate as has been awarded to other land owners whose land was acquired vide the same notification.

As far as first contention of Mr.Naresh Kumar Thakur is concerned, reference may be made to two judgments of the Apex Court. In **Union of Inida and another v. Pradeep Kumari and others, (1995) 2 Supreme Court Cases 736,** the Apex Court clearly held that a person would be able to invoke the provisions of Section 28-A of the Act provided that various conditions are satisfied. One of the conditions is:

> *"(iv) The person moving the application did not make an application to the Collector under Section 18;"*

It is thus clear that the Supreme Court was of the opinion that a person who had filed a petition under Section 18 cannot file a petition under Section 28-A.

In fact this preposition of law is no longer res integra. A Constitution Bench of the Apex Court dealt with this matter in detail in **Union of India and another v. Hansoli Devi and others (2002) 7 Supreme Court Cases 723**. After considering the provisions of the Act and entire law, the Apex Court upheld what had been stated in Pradeep Kumari's case (supra) in so far it related to condition No.(iv) quoted hereinabove. The only exception which the Constitution Bench carved out was in those cases where though a petition under Section 18 had been filed, it had not been entertained on a technical ground such as the ground of limitation. The Apex Court held that such a defective petition does not fructify into a reference and would not tantamount to an effective application

and, therefore, such a person would not be debarred from invoking the provisions of Section 28-A.

In the present case, not only was the reference under Section 18 filed, the reference was referred to the decision of the District Judge, who decided the same on merits. Therefore, the petitioner had no right whatsoever to invoke the provisions of Section 28-A and no fault can be found with the order of respondent No.3.

In support his second contention, Mr.Naresh Kumar Thakur has relied upon a decision passed in **Bhag Singh and others v. Union Territory of Chandigarh, AIR 1985 Supreme Court 1576** and especially the observations made in para 3 of the said judgment wherein the Apex Court has held that the High Court should not have adopted a technical approach and should not have denied compensation to the appellants merely because they had not initially paid proper amount of court fee. The Apex Court went on to observe that in a land acquisition case the dispute was not between two citizens but between the State and a citizen and, therefore, no citizen should be deprived of equal compensation.

Reliance has also been placed on a judgment of the Delhi High Court passed in **Ram Mehar v. Union of India, AIR 1987 Delhi 130**. Facts of this case are that the land of Ram Mehar was acquired alongwith others by the Union of India. He filed a reference petition under Section 18 and thereafter an appeal and his appeal was disposed of by a Division Bench and he was granted Rs.3500/- per bigha. However, out of the same acquisition proceedings, another Division Bench passed an order awarding Rs.10,000/- per bigha. Thereafter, the petitioner filed a review application before the Court and the Court held that it had no power to review its earlier order under Order 47 of the CPC. The Court,

however, held that the petitioner should not be denied equal compensation and exercised its inherent powers and awarded compensation at the rate of Rs.10,000/- per bigha to the petitioner.

In **Banta Singh and others v. Union of India and others, AIR 1988 Punjab and Haryana 308,** a Full Bench of the Punjab and Haryana High Court directed the parties to make good the deficiency in the court fee even after the dismissal of the appeal. While doing so, the Full Bench relied upon the provisions of Section 28-A of the Act. However, it would be pertinent to mention that the Full Bench also held that Section 28-A of the Act is applicable only in a case where the claimant had not asked for reference under Section 18 of the Act.

We are of the considered view that as far as judgments of the Apex Court and the Full Bench of the Punjab and Haryana High Court are concerned, they are not at all applicable to the facts of the present case. Both these cases related to permitting the parties to make up the deficiency in court fee after decision of the case. As far as Ram Mehar's case is concerned, the Delhi High Court exercised its inherent powers under Section 151 in proceedings which had arisen out of Land Acquisition Act itself.

There is no manner of doubt that the judgments cited by Shri Naresh Kumar Thakur do support his case to a certain extent inasmuch as the courts have recognized a principle that a person similarly situated should not be denied the benefit of equal compensation on technical grounds. But all these judgments were delivered prior to the judgments of the Apex Court in Pradeep Kumari's and Hansoli Devi's cases.

The legislature in its wisdom introduced Section 28-A of the Land Acquisition Act. This was a new provision brought into the Act with the sole

purpose to ensure that equal compensation is not denied to persons who do not file reference petitions. However, the legislature in its wisdom thought it fit that this benefit would not be available to persons who had filed reference under Section 18. The reason behind this is obvious. Once any party becomes a party to legal proceedings, then it must follow the procedure prescribed under law. The party to vindicate its right must file appeal, review etc. as may be permissible under law. The same must also be filed within limitation. In the present case, the petitioner was respondent in the appeal filed by the State. Whereas other land owners chose to file cross objections, the petitioner did not deem it fit to file cross objections. The petitioner could have been well advised to have even filed cross objection at a later stage with an application for condonation of delay. However, this was not done.

The learned Single Judge, while hearing the RFA, had clearly held that the petitioner was not entitled to enhanced compensation in view of the fact that the petitioner had not filed cross objection. This judgment has attained finality. The petitioner did not deem it fit or proper to challenge this judgment before the Apex Court. He instead filed an application under Section 28-A of the Land Acquisition Act. This was totally misconceived in view of the bar provided in the section itself. Section 28-A clearly debars any person from filing a petition under Section 28-A of the Act.

Since the petition under Section 28-A was not maintainable, no order can be passed in favour of the petitioner. Section 28-A provides for a specific procedure to be followed. The Apex Court has held that the application must be filed within limitation and that there is no power to condone the delay. In the present case, the petition under Section 28-A was also time barred. This Court cannot exercise its inherent powers to violate the provisions of law.

In view of the above discussion, there is no merit in the petition which is dismissed.

(Deepak Gupta), J.

(V.K. Ahuja), J.

August 27, 2007. (trs)